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of 2000 feet and north. Inasmuch as there was no communism in the village until the revolution, the author does not know if it be true that the Chinese have been influenced by the Communists.

CHINA TODAY

An Address

Before the International Chamber of Commerce at Colorado Springs,
December 7th, 1926

by

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Jurisdiction in China and a Delegate of the United States
to the Special Conference on Chinese Customs
Tariff held in Peking 1925-1926.

GENERAL CONDITIONS.

China is larger than the United States, Mexico and Central America combined. It is larger than Europe. China has all the extremes of climate. It is cold and dry in the desert north and hot and damp in the tropical south. It has a great variety of natural resources. More than 400,000,000 people, or one-fourth of the people of the earth, live in China. As nearly as can be estimated, 97 per cent of the Chinese can neither read nor write, even in the Chinese language. That does not mean that the Chinese people are stupid or of a low order of intelligence, but the great mass have no educational opportunities. There are many different dialects. The Cantonese coolie cannot converse with the Pekinese except in pidgin English.

There are about 7,000 miles of railroad in China compared with 265,000 in the United States. The railroads traverse fertile areas and the tonnage available for transportation is large. On account of cheap labor and the low cost of living, the operating ratio of the Chinese railroads to their earnings is less than that of any other country.

In other countries the earnings of the railroads are used first for the payment of employees, for operating expenses,

maintenance of way and equipment, then the net goes to the owners or security holders. In China practically all of the earnings of the railroads is confiscated by the warlords. I quote from the official report of the Chinese Minister of Communications to the Chief Executive of the Chinese Republic, submitted in September, 1925:

"Communications are intimately related to the development and existence of the country. The four branches of communications in China (railways, telegraph lines, wireless and telephones) are still in a stage of infancy. The internal troubles and political upheavals of recent years have seriously affected their development. The fundamental evils arresting the proper development of communications are: (1) a lack of unification in administrative control and (2) failure to preserve the revenues of the communication systems for their own use.

The results of these two evils are: inconsistencies of policies, inefficiency in management, deterioration of equipment and default of loan payments. All these are detrimental to the development of communications.
* * *

China's trouble lies not in the want of a good system but in the fact that a good system is not effectively enforced. During the last 13 years the so-called financial integrity of the Administration of Communications exists only in name. It has been trammelled and put under fetters. There is no public opinion to come to its rescue and restore it to its proper function. As result the revenues from communications during the last 13 years have been diverted to other purposes, and loans have been contracted ostensibly for the purpose of their development but actually to meet the requirements of governmental and military expenses. In more recent years, the revenues of the railways have become a source of income to militarists who appropriate them directly. The Kin-Han railway alone supplies more than \$10,000,000 annually to military requirements. The funds that have been seized from other railways and telegraph offices are enormous. Not satisfied with merely commandeering the earnings, all railways and telegraph offices have been obliged to borrow money at a high rate of interest to meet these military demands. There have even been cases of high military officers borrowing directly from

the merchants pledging the revenues of communications as security, and pressure has been brought upon the railways and telegraph lines to pay back the loans accordingly. It is estimated that up to the end of the 13th Year of the Republic no less than \$180,000,000 have been appropriated, seized and taken away in one way or another by different forces. If the interest on this amount is calculated the total amount comes up to \$250,000,000. The funds at the disposal of the means of communication are drained dry and the revenues yet to be earned are mortgaged. The means of communication are left with no funds to carry on their operation. If the independence of accounts had been enforced, such an enormous amount of money could be used in the first place for the amortization of debts which would greatly lessen the burden of indebtedness; and in the second place it might have been used to start new enterprises. The benefit that would accrue from this would be even greater. But what do we have now? The funds of the railways are exhausted and debts are piling up. Work on uncompleted lines is interrupted and deterioration overtakes the existing lines which are gradually becoming useless. There is no money to buy even the materials required for daily use and wages are overdue. Bridges are decaying and falling. Rolling stocks are broken down and sadly in need of repairs. Traffic is in daily danger of interruption, in consequence of deterioration and lack of repair. The telegraph service has the same sad story to tell. Loans contracted for its improvement and expansion have been appropriated by the Government for other purposes and its revenue has been seized by the provinces. Payment of interest on loans has been long delayed and telegraph lines have been allowed to deteriorate without the means for repairs or extension.

The railways and telegraph for which the energy and labor of several tens of years have been spent are now on the brink of bankruptcy. Navigation and the post fare better but this is because navigation is still in the stage of infancy. The post is only able to maintain itself. If no radical departure is made from the present way of doing things it is reasonable to expect that the railways and telegraphs will become so deteriorated in a few years as to become useless. In that event the

difficulties and sufferings that will overtake the nation and the people will be impossible to describe."

Since the date of that report conditions have rapidly grown worse. To-day every railroad in China is controlled by the military. When the equipment is not being used for the movement and billeting of troops its use is sold by the warlords to the unfortunate shippers at outrageous rates. The usual "squeeze" for the use of a freight car is \$5 per ton in addition to the freight rate. Thus, to obtain the service of a 40-ton car from Tientsin to Peking, a distance of 90 miles, the shipper is held up for \$200 plus the regular rate.

The American Legation at Peking last summer arranged to buy its winter supply of coal from a mine about 20 miles from Peking. The underlings of the dominant warlord demanded a "squeeze" of \$2 per ton for the cars to move the coal; in addition, the Legation must pay the warlord \$25 per car and the village through which the coal must pass \$1.80 per car. More aggravating is this episode when it is known that the cars and locomotives to move this coal were furnished to the Chinese Government by American builders and they have not yet been paid for, the debt being several years in default. The unfortunate vendors have no lien on the equipment and could not enforce it if they had.

When I left China I was reliably informed that one of the warlords was collecting from the Peking-Hankow railroad \$1,000,000 per month. The entire earnings of the road being \$1,500,000 per month and its pay roll \$650,000, it is obvious that the employees could not be paid, and they had not been for several months. Another dominant warlord was receiving the revenue from the Peking-Mukden railroad, which runs from Peking to Mukden.

As the Minister of Communications said in his report, no attention is paid to maintenance of way or equipment. All of the equipment is rapidly becoming useless because of lack of repairs. Loans upon railroads are defaulting as they

mature. Unless conditions soon change it is inevitable that it will not be long before the railroads of China must cease to operate and the unfortunate Chinese people will be compelled to go back to the barrow or to pack their freight upon their backs. Most of the camels, donkeys and cattle of the patient, industrious farmers have already been taken by the soldiers.

There are no highways in China and few automobiles. There are about 8,000 motors in all China against 20,000,000 in the United States. The Ford factory in Detroit turned out in one day in October, 1925, over a thousand automobiles more than there are in all China.

THE GOVERNMENT.

On October 9, 1911, a bomb exploded in a Chinese home in the Russian Concession in Hankow. This was the beginning of a revolution which resulted in the abdication of the Manchu Dynasty on February 13, 1912. The revolutionists issued a manifesto more eloquent in denunciation of the oppression of the Manchus than was our Declaration of Independence in denouncing the treatment of us by King George III.

Many patriotic, well educated and intelligent Chinese have been and are doing their best to establish a Republic with a stable Government. But they have met with little success in the face of the continuing wars carried on by warlords who are actuated by but two motives—greed and aggrandizement.

It would be unreasonable and unfair to expect China, which had been an absolute monarchy for thousand of years—a country so vast in area, so numerous and illiterate in population, and so lacking in means of communication—to evolve a modern republic constructed along occidental lines in the short space of 14 years. To-day we cannot regard China as

a republic in anything more than name, but the efforts of the Chinese citizens to bring order out of the existing chaos should be encouraged by all of the foreign Powers.

As indicative of the instability of the Chinese Government, I may mention that since the attempt to establish a republic 14 years ago, there have been 8 presidents or chief executives; 43 cabinets with a continuously changing membership; and 25 ministers of justice.

The last President, Tsao Kun, was locked up in Peking from December, 1924 to April, 1926, because it was said he bought his office. Yet no formal charge was ever made against him and he was never brought to trial. He was released when the armies of Wu Pei-fu and Chang Tso-lin entered Peking on April 10, 1926. On that day the Chief Executive, Tuan Chi-jui, fled from the presidential mansion to the foreign Legation Quarter in Peking and thence to a foreign concession in Tientsin where he now resides. Two other presidents of the Chinese Republic preceded him to that asylum. In China it may be a capital offense to differ politically so that when an opponent gets control of the governmental machinery, or a hostile military leader appears, it behooves officials to get within the protection of a foreign concession if they desire to live.

In addition to the three former chief executives now living in Tientsin, there are said to be in the foreign concessions there, 26 former tupans or governors of the several provinces and a large number of other high officials who have either incurred the wrath of their political opponents or who are charged with having too generously helped themselves from the public treasury.

Since April 10, 1926 there has been no Government in China. The authority of the Central Government is gone. The entire country is overrun by soldiers and bandits. Foreign Legations are unable to secure any redress from

the Central Government for wrongs done to their nationals in any part of China. Provincial officials hold the Central Government and its orders in contempt. Long past due obligations, foreign and domestic, for money borrowed and for materials furnished give the Central Government little or no concern. The officials, who are the mere servants of the warlords, are interested solely in devising ways and means of increasing the loans and raising funds to meet the requirements of their masters.

Outrageous internal taxes of every conceivable kind are levied upon merchants and tradesmen, the revenue from which does not go to the support or maintenance of the civil functions of the Government, but to the military. The civil officials remain unpaid.

No Chinese citizen dares protest or attempt to do anything to bring order out of the chaos that obtains. Every newspaper article which escapes the censor and which may be regarded as a criticism of the dominant warlord or his underlings, subjects the editor to the peril of summary execution without even the pretense of trial.

I have stated a few of these facts that you may have some idea of the difficulties confronting the foreign Powers in their efforts to do something for the patient and long suffering Chinese people.

In China we hear much of the "sovereign rights" of the Chinese Republic. The Chinese politicians and the military do not seem to be interested in the rights of the people.

THE TARIFF CONFERENCE.

One of the treaties concluded at the Washington Conference on February 6, 1922, related to the Chinese Customs Tariff. The Treaty provided that immediate steps should be taken for a Special Conference to prepare the way for the speedy abolition of *likin* and for the fulfillment of certain

other conditions laid down in the Treaty of September 5, 1902 between Great Britain and China, in the Treaty dated October 8, 1903, between the United States and China, and one of the same date between Japan and China, with a view to levying the surtaxes provided for in those treaties.

The Conference was to be composed of two representatives of each of the Signatory Powers, and of such other Powers as might desire to participate. It was to meet in China within three months after the coming into force of the Treaty on a day and at a place to be designated by the Chinese Government.

The Treaty also provided that the Conference should consider interim provisions to be applied prior to the abolition of *likin* and the fulfillment of the other conditions laid down in the articles of the treaties, and that the Conference should also authorize the levying of a surtax upon dutiable imports as from such date, for such purposes and subject to such conditions as it might determine. The surtax should be at a uniform rate of $2\frac{1}{2}$ per cent *ad valorem*, provided that in case of certain articles of luxury the rate might be increased up to 5 per cent.

“*Likin*” is a tax imposed upon goods in inland transit. It was originally levied to meet the additional requirements caused by the Taiping Rebellion. It was first imposed in 1853 upon goods while in transit from one province to another, or from one district to another in the same province. As the demands of the militarists for money became more persistent, *likin* stations or barriers were placed along all the main routes of commerce, both by land and water, sometimes at intervals of less than 20 miles. Now, although there is in existence an official tariff, it is practically ignored both by officials and traders to allow for “squeeze.”

So long ago as 1902 in the Mackay Treaty with Great Britain the Chinese Government recognized that the system

of levying *likin* and other internal taxes upon goods in transit and at destination greatly impeded trade and it undertook to discard that system.

After the signing of the Treaty of February 6, 1922 and before it was ratified by all of the Powers, a controversy arose between China and France over the payment by China of the French Boxer Indemnity. China insisted that she had a right to pay it in the depreciated paper francs while France demanded that it should be paid in gold francs. This controversy was not settled until the Spring of 1925 whereupon the Chinese called the Conference. Mr. John Van Antwerp MacMurray, our able and experienced Minister to China, and I were named as the Delegates representing the United States. There were thirteen Powers—(the United States, the British Empire, Japan, France, Italy, the Netherlands, Belgium, Norway, Sweden, Denmark, Spain, Portugal and China) represented at the Conference which convened on October 25, 1925, in Peking.

At the time of the calling of the Conference war conditions in China were comparatively quiet. Tuan Chi-jui was acting as Chief Executive pursuant to an agreement between Feng Yu-hsiang and Chang Tso-lin. When the foreign Delegates were en route to China Feng and Chang began to quarrel. The former, known as the "Christian General," accused Chang of being a traitor to his country because of his alleged affiliation with Japan, while Chang accused Feng of being "red" because of his relations with Soviet Russia. War continued with Peking and the control of the Central Government as the objective and the national treasury as the stake, until Chang, coalescing with Wu Pei-fu, succeeded in compelling the withdrawal of Feng and his army from Peking on April 10, 1926. Since then, as I have stated, there has been no Central Government in China.

Fighting along the right of way of the railroad between

Peking and Tientsin cut Peking off from all rail communications with the outside world for three weeks in December, 1925, and for a similar period in March and April, 1926.

When the Tariff Conference was called, China was represented by 10 Commissioners and Delegates Plenipotentiary. Some of these Delegates were the nominees of Chang Tso-lin and some of Feng Yu-hsiang. When Feng gained control of the Peking area and the Central Government, it was necessary for the Chang men on the Delegation to flee to the foreign concessions at Tientsin. This they did shortly after the Tariff Conference began. When later the control shifted from Feng to Chang and Wu, the Feng Delegates, including the Chairman of the Tariff Conference fled, so that on the day of the *coup d'etat*, April 10, there remained but three of the ten Chinese Delegates. Those remaining were not so definitely aligned in politics as to necessitate their flight, but by reason of the shift of power from Feng to Chang and Wu they were bereft of their authority.

The American Delegates were instructed by the Secretary of State to do everything possible to carry out the letter and spirit of the Washington Treaty respecting the Chinese Tariff. Accordingly, at the beginning of the Conference our Delegation, followed by the Delegations of the other nations, proposed immediately to implement the Washington Treaty, which it is estimated would increase China's revenue by \$30,000,000 (silver) per year. The Chinese Delegation refused to accept the offer because the Chairman said if they accepted that proposition the foreign Delegates would "run out" on them, and would not give them additional tariff to yield a total revenue of \$100,000,000 (silver) per year, which the Chinese insisted they required.

The Powers, on the initiative of the American Delegation, met this suggestion by offering not only to give China the surtaxes provided in the Washington Treaty but also to

begin immediately the negotiation of a new Treaty which would give China all the additional revenue the traffic would bear. Obviously, if the tariff were too high there would be no trade and consequently no revenue.

Notwithstanding Peking was continuously the vortex of military activity and the disappearance of the Chinese Delegates, the foreign Delegates persisted in their efforts to frame a tariff schedule which would yield enough revenue to enable China to start on the abolition of *likin*, to consolidate her debts and to have something left for administrative and constructive purposes. There was no substantial difference among the Powers and their technical advisers came practically to an agreement with the Chinese technical advisers upon a tariff schedule. We could not agree upon a treaty because, instead of the foreign Delegates "running out" on the Chinese, the Chinese Delegates, including the distinguished Chairman, "ran out" on us.

After patiently waiting for months for the Chinese to establish a Government in order that the Tariff Conference might continue, the Delegates of the foreign Powers met on July 3d and issued a statement that they were earnestly desirous of continuing the work of the Conference at the earliest possible moment the Delegates of the Chinese Government were in a position to resume with the foreign Delegates the discussion of the problems before the Conference. When I left Peking on September 16 there was little hope of the Conference having another meeting in the near future because there were no representatives of a Central Government in China with whom to confer.

THE EXTRATERRITORIALITY COMMISSION.

Extraterritoriality may be defined generally as the exemption of a foreigner from the operation of the local law of a country he may visit. For example, if a citizen of the United States residing in China, be sued or arrested he can invoke the jurisdiction of our consuls and of our United States Court for China. Extraterritoriality is granted either by usage or treaty on account of differences in the laws, customs and social habits of nations.

The extraterritorial rights of the several Powers in China are based upon treaties, the first of which was that of Great Britain in 1843, that of the United States in 1844, followed by the other nations from time to time until the last, a treaty with Switzerland concluded in 1919. Extraterritorially is a temporary arrangement pending the establishment of a stable judicial system in the country granting the extraterritorial rights. For many years the Chinese have insisted that the exercise of extraterritorial jurisdiction in their country impinged upon their sovereign dignity and that those rights should be surrendered. It has been claimed that China was coerced by the foreign Powers into the making of her extraterritorial treaties. That statement is not justified by the facts. The absurdity of the charge will appear when we reflect upon the strength of the Swiss navy. Switzerland's Treaty, as above noted, was concluded in 1919.

Great Britain, by Treaty of September, 1902; and the United States and Japan by their treaties of 1903, each agreed to give every assistance to the attainment by the Chinese Government of its desire to reform its judicial system and to bring it into accord with that of the Western nations. These three nations in their treaties also declared that they were prepared to relinquish their extraterritorial rights when satisfied that the state of Chinese laws, the arrangements for their administration and other considerations warranted them in so doing.

Resolution No. V adopted on December 10, 1921, at the Conference on the Limitation of Armament, provided for the establishment of a Commission composed of one representative from each of the countries having extraterritorial treaties with China, to inquire into the present practice of extraterritorial jurisdiction in China and into the laws and judicial system and the methods of judicial administration in China.

The Resolution gave no authority to negotiate a treaty. The duty of the Commissioners was to report to their several Governments their findings of fact and their recommendations as to such means as they might find suitable to improve existing conditions of the administration of justice in China and to assist and further the efforts of the Chinese Government to effect such legislation and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality.

The Commission was composed of representatives of the United States, the British Empire, Japan, France, Italy, Belgium, the Netherlands, Norway, Sweden and Denmark, Portugal and Spain. China also was represented on the Commission by a very able Chinese lawyer and jurist.

China requested that the Commission meet in Peking on December 18, 1925, but on account of fighting along the line of railway between Peking and Tientsin it was impossible for some of the Commissioners to reach Peking by that date. Accordingly, the Commission held its first meeting on January 12, 1926 and thereafter continued to investigate the subject until it completed its work with a report signed by all of the Commissioners on September 16, 1926. The Chinese Commissioner stated that by signing the report his approval of all the statements contained in Parts I, II and III was not to be implied but made no reservations as to Part IV, which was the recommendations.

The report is divided into four parts: Part I deals with the present practice of extraterritoriality in China; Part II reviews the laws, the judicial and prison systems of China; Part III covers the administration of justice; and Part IV the recommendations made by the Commission.

The report recognizes the fact that extraterritoriality is a *modus vivendi* to insure harmonious relations between China and the Powers until the evolution of the laws and legal conceptions of the Chinese should render it unnecessary. The chief objections to the exercise of extraterritorial rights are (1) the multiplicity of courts and diversity of laws anomalies arising because every foreign country administers its own laws and courts in China; (2) the inaccessibility of the courts because of the wide stretch of Chinese territory and the comparatively few foreign consuls; (3) inexperience and lack of judicial training on the part of the foreign consuls; (4) appeals from foreign courts in China in some instances must be taken to a court beyond the territorial limits of China; (5) the courts of the foreign Powers in China, being obliged to apply the laws of their several countries, are powerless to modify these laws without specific authority in each case; (6) some extraterritorial Powers too readily extend their protection to Chinese in China by allowing Chinese to become citizens of the foreign countries Chinese firms and property to be registered as foreign in the foreign consulates, thus removing Chinese persons, property and business interests from the jurisdiction of Chinese laws; and (7) the inviolability of foreign premises and restrictions upon travel, trade and residence.

After the ratification of the treaties of 1902 and 1903 with Great Britain, the United States and Japan, to which I have referred, the Chinese constituted a Law Codification Commission to revise the laws of China. China adopted a republican form of Government in 1912. Since then three Constitutions have been adopted and each in turn set aside.

warranted them in so doing.

There is now no Constitution in China. Each of the Constitutions provided that a Parliament should be the sole law-making body and the power of the President limited to the promulgation and execution of laws. The judicial functions were under the direction of a Ministry of Justice.

Although the Commissioners commend the efforts of the Law Codification Commission in framing a code of laws for China, they find that very few of the laws which were presented to the Commissioners as now being applied in Chinese courts were ever enacted or framed by Parliament as the Constitution provides. The so-called laws of China are based upon mandates of the President or orders of the Ministry of Justice, neither having any legal or constitutional authority to make laws. This practice has resulted in encroachment upon the powers of legislature and the judiciary by the frequently changing administrative officials who are, in a great number of cases, nominees of the military leaders and in the corresponding diminution of attempts to give popular sanction to the laws and their administration.

The Commission found that for the last ten years there has been increasing disorder in China with a corresponding decrease in the authority of the Central Government, together with an assumption of power by the provincial authorities. That since the autumn of 1917 the Chinese authorities in the provinces of Kwangtung (Canton) and Kwangsi have refused to recognize the authority of the Central Government and other provinces at various times since have refused its recognition. That in addition to the lack of a controlling Central Government, there has been for several years almost continuous civil warfare in various parts of China. That growing out of this disordered state of affairs brigandage has become common in many parts of China constituting a further menace to the lives and property of the civilian population. That the reins of Government have fallen into the hands of military leaders who by

virtue of their powerful position can assume at will administrative, legislative and judicial functions thus tending to obliterate the line of demarcation between the executive, legislative and judicial branches of Government.

The treasury has been depleted to such an extent that funds are at times lacking with which to pay the judicial and police officials. For some ten days during the time the Commission was sitting in Peking the judges were on strike for want of pay.

Military leaders, possessing their own armies engaged in constant warfare, exercise almost unrestrained authority over the lives, liberty and property of people in areas which happen for the time being to be within their control. The exodus to places of safety by civil officials appointed by one military party from an area, the capital included, which has been taken over by their opponents, is a matter of common occurrence. Military interference with the civil administration extends to the judiciary so that the independence of this branch of Government is in danger. The position of the military leaders, under Chinese law, renders them immune from the jurisdiction of the ordinary courts, and their power often renders them immune from all courts. The military are constantly committing crimes which go unpunished. For it is generally difficult for an aggrieved person to obtain any redress from the military authorities commanding their own armies when such redress must be sought in military courts controlled by these authorities.

The Commission found that the callous attitude of the military with respect to the situation was emphasized by the fact that during the time the extraterritorial Commission was sitting in Peking there were many instances of executions and other acts perpetrated by the military in such complete disregard of the principles of justice that the Commission felt compelled to refer to them in its report. These cases occurred at the time and in the city in which the Com-

mission was making its investigation; they were matters of common knowledge in which the substantial facts were admitted and beyond dispute.

The Commission also had before it numerous consular reports relating not merely to occurrences during the civil war in the vicinity of Peking, but indicating the existence of a general interference with and disregard of the civil administration of justice by the military for the past few years, covering every part of China.

The Commission said:

"The Commission believes it well within the range of moderation to state that in China at the present time there is no effective security against arbitrary action by the military authorities with respect to life, liberty or property in so far as such security can be afforded by the effective functioning of the Chinese civil and judicial authorities."

The laws of China are not universally applied in all parts of the country. This condition arises because of the open refusal of certain parts of China to recognize the Central Government and because of the promulgation of subsidiary legislation by provincial and other powerful authorities without constitutional authority to make law. The provincial authorities and military leaders are promulgating laws and regulations in addition and sometimes contrary to the laws of the Central Government.

There are but 139 modern courts in China and but 91 modern courts of first instance. That is, one court for every 4,400,000 population. Obviously, the number of courts is not adequate to the population and the size of the country. The salaries of the judges are inadequate and there is no assurance that any salaries will be paid regularly.

The Commission makes several recommendations and expresses the opinion that when these recommendations shall have been reasonably complied with the several Powers will

be warranted in relinquishing their respective rights of extraterritoriality.

The first recommendation is that the administration of justice with respect to the civilian population in China must be entrusted to a judiciary which shall be effectively protected against any unwarranted interference by the executive or other branches of the Government.

Suggestions are made as to a number of laws which should be completed and put into force.

There is no dictation as to the kind of Government which China shall have, but the Commission recommends that China should adopt and maintain a uniform system for the regular enactment, promulgation and rescission of laws so that there may be no uncertainty as to the laws of China.

That it should extend the system of modern courts, modern prisons and modern detention houses with a view to the elimination of magistrates' courts, and of old style prisons and detention houses; and that it should make adequate provision for the maintenance of the courts, prisons, detention houses and their personnel.

It suggested that prior to the reasonable compliance with the recommendations above mentioned, but after the principal items have been carried out the Powers concerned, if so desired by the Chinese Government, might consider the abolition of extraterritoriality according to such progressive scheme, whether geographical, partial or otherwise, as might be agreed upon.

The Commission condemns certain practices in the exercise of extraterritorial jurisdiction in China and suggests modifications, among which are that the Powers should administer, so far as practicable, in their extraterritorial or consular courts, such laws and regulations of China as they may deem it proper to adopt.

That, as a general rule, mixed cases between nationals of the Powers concerned as plaintiffs and persons under Chinese jurisdiction as defendants should be tried before the modern Chinese courts without the presence of a foreign assessor to watch the proceedings or otherwise participate. That with regard to the special mixed courts, their organization and procedure should, so far as special conditions in the settlements and concessions warrant, be brought more into accord with the organization and procedure of the modern Chinese judicial system.

The Commission recommends that the extraterritorial Powers should correct certain abuses which have arisen through the protection of Chinese, as well as of business and shipping interests, the actual ownership of which is wholly or mainly Chinese, and that the extraterritorial Powers which do not now require compulsory periodical registration of their nationals in China should make provision for such registration. That satisfactory arrangements should be made between the Chinese Government and the Powers concerned for the prompt execution of judgments, summonses and warrants of arrest or search concerning persons under Chinese jurisdiction, duly issued by Chinese courts and certified by the competent Chinese authorities, and vice versa, thereby enabling the Chinese to demand the surrender of any "wicked" Chinese who seeks asylum in a foreign concession or settlement, and also to demand the punishment of a "wicked" foreigner who has sought to escape the penalty of the law by taking refuge in some settlement or Legation.

I commend this report to the perusal of those interested in the subject. Copies may be obtained upon application to the Secretary of State.

CHINESE GRIEVANCES.

It is a primal instinct of human nature to attempt to blame someone else for one's misfortunes or shortcomings. I submit that any student of conditions in China to-day must conclude that the present troubles of the Chinese people are internal and not external, and that the anti-foreign and anti-christian feeling now obtaining in some parts of China is the result of persistent agitation and propaganda intended to excite the Chinese people into a state of frenzy and unrest.

Popular slogans are "unequal treaties," which includes foreign concessions and settlements, the Customs, the Customs service, extraterritoriality and tariff autonomy, and "imperialism." May I briefly refer to some of these complaints.

Foreign concessions and settlements had their origin in a desire on the part of the Chinese to segregate the foreigners from the Chinese people. The United States has no concession in China. The territories set aside, particularly at Shanghai and Tientsin, the most important foreign concessions and settlements, were swampy, poor land. Yet under foreign control they have grown to be the most prosperous and progressive places in China. So attractive are they that a very large percentage of the population in these settlements is Chinese. The Chinese agitators say that the concessions and settlements ought to be retroceded because "wicked" Chinese may run in there for protection. I have already referred to the recommendations of the Extraterritoriality Commission to meet that criticism.

I do not believe any of the Powers would refuse on a proper demand to surrender any "wicked" Chinese who sought asylum in a concession. I believe they would be equally prompt to recognize any demand of the Chinese authorities for the punishment of a "wicked" foreigner who might seek

refuge in a foreign settlement or concession. It may well be that under the principles of international law the Powers might refuse to surrender a Chinese citizen who had been guilty of no other offense than differing politically from his opponent or pursuer. For humanity's sake the foreign Powers might refuse to contribute to the inevitable fate which would befall such an unfortunate Chinese citizen were he surrendered.

The retrocession of the concessions and settlements is a political question of which the Extraterritoriality Commission declined to take jurisdiction as not being within the scope of the Resolution. Foreigners, and I believe thoughtful Chinese, in so far as they dare express themselves, residing in the foreign concessions and settlements would vigorously oppose any retrocession because they know that as conditions now exist in China these concessions and settlements when returned to China would rapidly disintegrate and be destroyed. Foreigners would lose all of their property and the Chinese now in the settlements would be subjected to the levy of outrageous Chinese taxes and other military "squeeze" methods which they now escape.

There is not a bank or vault in any of the foreign concessions in China today which is not full of valuables deposited there by Chinese merchants, bankers and citizens for protection against inevitable confiscation and destruction if the property could be reached by the military.

As evidence of what would happen were the concessions retroceded, I invite attention to the concessions surrendered by the Austrians and Germans at Tientsin, and that surrendered by the Japanese at Tsingtao. Comparison of the present condition of these surrendered concessions with the contiguous concessions which are still under foreign control should certainly discourage even the most ardent Chinese

nationalist from an insistence upon the demands for their retrocession. The foreign concessions and settlements are the only places in China which evidence an orderly and systematic administration.

The Chinese agitators complain because they pay taxes in the foreign settlements and have no voice in their government. Although the Chinese came into the foreign settlements voluntarily, and although there is little, if any, representative government in any of the Chinese governed cities in China, nevertheless, the foreign settlement at Shanghai is recognizing the demand of the Chinese residents in the settlement for a voice in its government.

Customs. The Chinese politicians have complained that they could not revise their Customs Tariff without the unanimous consent of all the Powers with which they had treaties. Nations cannot disregard their treaties any more than individuals can ignore private agreements. The very object of the Tariff Conference was to revise the treaties the several Powers have with China. Had the Special Conference been carried to a conclusion the cause of that criticism would have been entirely removed. It was the repeatedly expressed intention of the foreign Powers not only to agree upon a tariff schedule which would give China all of the tariff the traffic would bear, but they also agreed to include in a treaty to be evolved at the Conference a provision, among others, that China should have complete tariff autonomy on January 1, 1929, China at the same time agreeing that she would abolish likin on that date. It is no fault of the Powers that the Conference was not concluded and that China did not realize her ambition.

Another complaint is of the administration of the Chinese Maritime Customs by a foreign Inspector General. It is declared that the revenue is seized and subverted to the use of the foreign imperialistic Powers. This assertion has

no basis whatever. In 1859 some of the treaty ports then open to foreign trade came under the temporary supervision of the foreign Powers for the collection of war indemnity which the Imperial Government could not pay. When the indemnity had been collected the Chinese Government was surprised at the celerity with which so large an amount had been received from foreign trade and the Chinese invited the temporary foreign supervisors to continue the collection of the revenue, which condition has obtained thence hitherto. The present Inspector General, a British subject, is nevertheless an employee of the Chinese Government. A large part of China's indebtedness is secured by the Maritime Customs. The Chinese Government has been able to place loans upon this security because creditors, both foreign and domestic, have confidence in the stability of the Customs so long as a foreigner is Inspector General and has control of the funds. Any one who has made even a casual study of China's financial situation knows that the foreign Inspector General of Customs is the only anchor between order and absolute financial chaos in China. At present there is no Chinese or group of Chinese however strong and well-intentioned they might be, who could withstand the importunities of their families and their political friends, or resist the bayonet of the warlords if the customs funds were taken from the control of the foreign Inspector General and placed in the hands of Chinese officials. If and when that should occur, considering conditions in China as they now exist, the security back of the loans, domestic and foreign, will be gone and the creditors of China who now rely upon the Customs for protection will be in the same hopeless situation as are China's unsecured creditors. It is incomprehensible that any thoughtful Chinese citizen would wish to have that condition brought about.

Imperialism. It is said that China suffers from "imperial-

ism," and that it is wrong to maintain armed forces upon Chinese soil and gunboats in Chinese waters. The policy of the United States toward China is not now, and never has been imperialistic. It has always been helpful and sympathetic. Whatever may have been the attitude of some of the Powers in the past, during my residence of eleven months in China with constant contact with the representatives of all of the foreign Powers, I saw no evidence of any desire to aggress upon Chinese territory. All the nations want is a peaceful China. The interest of the foreign Powers in China is in the development of their trade. Obviously, foreign trade cannot be extended into China unless there be peace. The Chinese people have no buying power unless there is peace. They have no means of transportation unless their railroads are restored and extended.

No nation, not even the United States can reach the maximum of its prosperity without friendly trade relations with the other nations. China needs trade with foreign nations more than the foreign nations need trade with China.

The foreign Powers keep small military forces for protection against mob violence only. Considering the vast numbers of the Chinese armies, their equipment with modern guns, and their acquaintance with modern methods of warfare, any resistance, even by the combined forces of the foreign Powers in China, would be futile. These small military guards protecting the concessions and legations do assure the foreigners who are obliged to live in China against hysterical mobs. They also are a comfort to the Chinese who are terrorized by bandits, brigands and uncontrolled soldiers. The office which I occupied in Peking was contiguous to the Legation Quarter. During the shift of military control of the city in March and April last, scores of poor, terrorized Chinese, men, women and children, swarmed into this building, as they did into every other building in or near the Legation Quarter.

to which they could gain access, and remained there for weeks in order that they might be protected against the Chinese soldiers and bandits.

We read that the gunboats of the United States and other foreign Powers are now proceeding to Hankow. They are going there to protect the lives and property of our citizens against mobs who have been excited by cries of anti-foreignism and anti-christianity. The crews of these boats have no aggressive designs upon Chinese territory or property.

Arms and Munitions. It is said that the foreign Powers furnish the Chinese with arms and munitions and therefore enable the warlords to carry on their useless wars. In May, 1919, certain of the Powers, including the United States, entered into an agreement whereby they undertook to restrain their nationals from exporting into China war materials. The Powers generally have lived up to the letter and spirit of that agreement. The agreement, however, does not effectively protect the Chinese against themselves. They are able to obtain arms and munitions from Russia. Sometimes when arms are imported into China and are attempted to be taken through the Customs, they are seized and confiscated as contraband, whereupon the dominant warlords seize the shipment for their own use. Doubtless the Chinese people may be powerless to prevent the importation of arms or the seizure thereof by the warlords but this is a situation which cannot be charged to the foreign Powers. It would be very difficult for the foreign Powers to attempt to police so vast a country as China against the acquisition of war material. Furthermore, the Chinese are rapidly erecting arsenals and munition factories and are not dependent upon foreigners for their implements of war.

I therefore submit that anyone who has investigated conditions in China today must conclude that extraterritoriality, unequal treaties, imperialism and the other slogans to which

I have referred have nothing to do with China's troubles. These catch words are being overworked by the agitators, many of whom are bolshevists, the politicians and the militarists to conceal from the long-suffering, patient and industrious people of China the pathetic fact that they are being impoverished and enslaved to serve the ambition of the warlords for greed and aggrandizement.

I conceived it to be my duty in China to investigate facts. I had no job to preserve, no ambition to promote, no propaganda to spread or to fortify. In my work I was given every assistance by the Secretary of State. My colleague in the Tariff Conference, the American Minister to China, Mr. John Van A. MacMurray, has spent his life in a study of China and our relations in the Far East. Before becoming Minister to China he had been Counsellor of our Legations in China and in Japan and was the head of the Far Eastern Division in the office of the Secretary of State. My other associates were men of ^{usual} ability and qualifications for their work, Mr. Mahlon F. Perkins, for thirteen years in the Consular service in China; Mr. Frank P. Lockhart, now Consul-General at Hankow and for many years associated with the Far Eastern Division of the Department of State; Mr. Joseph E. Jacobs, a Consul in China for twelve years, and than whom no one knows more about extraterritoriality and the administration of justice in China; Mr. A. H. Evans, Assistant Commercial Attaché in Peking, and Dr. Stanley K. Hornbeck, head of the Department of the Far East at Harvard University. Dr. Hornbeck has lived for several years in China and has made the study of China's problems his life work. In addition, I had the benefit of the experience and advice of Mr. Nelson Trusler Johnson, now the efficient head of the Far Eastern Division of the State Department.

He would be a poor representative of the United States

and a worse friend of China who permitted his emotions, aroused by the conditions now prevailing in China, to bias his judgment of the facts.

One of the big world problems of to-day is what can be done to help rescue the Chinese people from the enslavement of the warlords and to bring order out of the existing chaos. He who could prescribe a panacea for all the ills from which China now suffers would be the greatest pathologist the world has ever seen. I can write no prescription. In the solution of this problem as in that of any other difficult question, we must commence with a knowledge of the facts and not rely upon false premises, if we hope to arrive at an accurate conclusion.

The United States and the other Powers have done everything they could do to carry out the letter and spirit of the Washington Treaty, respecting the Tariff Conference and the Resolution about extraterritoriality. The work of the Extraterritoriality Commission is completed; that of the Tariff Conference is unfinished because of the conditions I have attempted to describe.

With conditions in China continuously changing it would seem to be quite impossible for us to adopt an inflexible, definite program concerning China. Under our scheme of Government the responsibility for our relations with China rests primarily upon the President and the Secretary of State. They are entirely familiar with the situation as it now exists and have the means of keeping in touch with conditions as they change. I have an abiding confidence in their ability and willingness to discharge that duty wisely and well.